

VINCENT A. HARRINGTON, JR., Bar No. 071119
 DAVID A. ROSENFELD, Bar No. 058163
 ERIC M. BORGERSON, Bar No. 177943
 WEINBERG, ROGER & ROSENFELD
 A Professional Corporation
 1001 Marina Village Parkway, Suite 200
 Alameda, California 94501-1091
 Telephone 510.337.1001
 Fax 510.337.1023

Attorneys for Plaintiff
 Service Employees International Union, Local 790

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL) No.
 UNION, LOCAL 790)

Plaintiff,

v.

JOSEPH P. NORELLI, Individually, and in his)
 capacity as Regional Director, NATIONAL)
 LABOR RELATIONS BOARD, REGION 20;)
 ROBERT J. BATTISTA, Individually and in)
 his Capacity as Chairman and Member of the)
 NATIONAL LABOR RELATIONS BOARD;)
 PETER N. KIRSANOW, Individually, and in)
 his Capacity as a Member, NATIONAL)
 LABOR RELATIONS BOARD; DENNIS P.)
 WALSH, Individually, and in his Capacity as a)
 Member, NATIONAL LABOR RELATIONS)
 BOARD; WILMA B. LIEBMAN, Individually,)
 and in her Capacity as a Member of the)
 NATIONAL LABOR RELATIONS BOARD;)
 PETER CARY CHAUMBER, Individually, and)
 in his Capacity as a Member, NATIONAL)
 LABOR RELATIONS BOARD,

Defendants.

**TEMPORARY
 RESTRAINING ORDER PENDING
 SCHEDULED HEARING ON MOTION
 FOR PRELIMINARY INJUNCTION,
 SET FOR JUNE 27, 2007
 [PROPOSED]**

This matter came before the Court by *ex parte* Motion for Temporary Restraining Order
 Pending Scheduled Hearing on Motion for Preliminary Injunction Set For June 27, 2007, filed by
 Plaintiff Service Employees International Union, Local 790 ("Local 790" or "Plaintiff"). After

1 reviewing the Plaintiff's Verified Complaint for Declaratory and Injunctive Relief; Request for
 2 Order to Show Cause Why Preliminary Injunction Should Not Issue; Motion for Preliminary
 3 Injunction; Memorandum of Points and Authorities in Support of Motion for Preliminary
 4 Injunction; Declaration of David Rosenfeld In Support of Order to Show Cause Why Preliminary
 5 Injunction Should Not Issue; Declaration of Jamie Thompson in Support of Motion for Preliminary
 6 Injunction Pending Scheduled Hearing on Motion for Preliminary Injunction Set For June 27,
 7 2007; responsive papers filed by the National Labor Relations Board ("NLRB"); Plaintiff's Motion
 8 for Temporary Restraining Order Pending Scheduled Hearing on Motion for Preliminary
 9 Injunction Set For June 27, 2007; Declaration of David Rosenfeld in Support of Temporary
 10 Restraining Order, and Memorandum of Points and Authorities in Support of Temporary
 11 Restraining Order Pending Scheduled Hearing on Motion for Preliminary Injunction Set For June
 12 27, 2007, the Court makes the following FINDINGS:

13 1. This case involves a challenge by Local 790 to a Decision and Order of the NLRB, dated
 14 March 30, 2007, published as *Covenant Aviation Security, LCC and Stephen J. Burke, Petitioner*
 15 *and SEIU Local 790*, 349 NLRB No. 67, ordering a secret-ballot election based on a petition to de-
 16 authorize a Union security clause ("de-authorization petition") contained within a Collective
 17 Bargaining Agreement ("CBA") between Local 790 and Covenant Aviation Security, LLC
 18 ("Covenant"), covering a bargaining unit composed of airport security personnel employed by
 19 Covenant and working at the San Francisco International Airport.

20 2. The grounds for the challenge are that the NLRB acted in excess of its statutory jurisdiction
 21 by violating a clear statutory prohibition set forth in Section 9(e)(1) of the National Labor
 22 Relations Act, 29 U.S.C. §159(e)(1), which prohibits such an election unless it is supported by a
 23 petition signed by at least 30 percent of the members of a bargaining unit at a time when they are
 24 covered by a collective bargaining agreement containing a union security clause.

25 3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1337(a),
 26 because Plaintiff has filed a Complaint in equity, challenging an action of the NLRB under the
 27 National Labor Relations Act, 29 U.S.C. § 141, *et seq.* ("NLRA"), an Act of Congress affecting
 28 commerce among and between the several states, on grounds that the NLRB exceeded its statutory

1 jurisdiction by violating a clear statutory prohibition set forth at NLRA § 9(e)(1), 29 U.S.C. §
 2 159(e)(1). (See *National Association of Agriculture Employees v. Federal Labor Relations*
 3 *Authority*, 473 F.3d 983, 988, fn 5 (9th Cir. 2007); *Bays v. Miller*, 524 F.2d 631 (9th Cir. 1975);
 4 *Leedom v. Kyne*, 358 U.S. 184 (1958).)

5 4. Venue is properly in this Court because the de-authorization petition at issue herein,
 6 bearing Case No. 20-UD-445, was filed with the NLRB, Region 20 office in San Francisco; the
 7 contract containing the Union Security Clause which is the subject matter of the pending de-
 8 authorization petition was entered into, and intended to be performed, at the San Francisco
 9 International Airport, within this judicial district; Local 790 has its primary office in the City and
 10 County of San Francisco; and the workforce covered by the Collective Bargaining Agreement
 11 containing the Union Security Clause which is the subject matter of the de-authorization petition is
 12 employed at the San Francisco International Airport, within this judicial district.

13 5. Plaintiff provided the attorney representing the Defendants in the above-captioned action
 14 with actual and sufficient notice of its Motion for Temporary Restraining Order.

15 6. After reviewing Plaintiff's Complaint, Motion for Preliminary Injunction and supporting
 16 papers, as well as papers submitted in opposition by the NLRB, the Honorable Phyllis J. Hamilton
 17 issued an Order to Show Cause Why Preliminary Injunction Should Not Issue on June 1, 2007,
 18 setting the matter for hearing in her court at 9:00 a.m. on June 27, 2007. This was the earliest date
 19 Judge Hamilton could hear the matter because she was to be absent from the court until that date.

20 7. Plaintiff therefore persuaded Judge Hamilton that it had a sufficient likelihood of prevailing
 21 on the merits of its claim that the NLRB order mandating an election on the de-authorization
 22 petition in this case was issued in excess of the Board's jurisdiction that Defendants should be
 23 required to appear in court and show cause why an injunction should not issue.

24 8. Defendant NLRB Region 20 Regional Director Joseph P. Norelli has issued a notice that
 25 the election ordered by the NLRB on the de-authorization petition at issue herein will commence
 26 June 22, 2007, five days before Judge Hamilton's return and before the hearing she scheduled for
 27 Plaintiff's Motion for Preliminary Injunction.

28 9. Plaintiff will suffer immediate and irreparable harm if the Court does not issue a Temporary

1 Restraining Order enjoining Defendants from proceeding with the scheduled de-authorization
2 election. Specifically, the following irreparable harm will result:

- 3 a. Local 1877¹ will be forced to divert substantial resources and personnel to immediately
4 conduct a campaign against de-authorization in time for the invalid election. Up to ten
5 Local 1877 staff employees will be forced to work full-time for likely upwards of two
6 weeks in order to conduct a campaign relative to the imminent election.
- 7 b. The diversion of resources that would be necessitated by the unlawful election in this
8 case would have a profound impact on the operations of Local 1877 and employees it
9 represents at the airport. Negotiations are underway between Local 1877 and other
10 employers at the airport regarding two Collective Bargaining Agreements, one of which
11 is expired. The staff that would be required to conduct a campaign against de-
12 authorization are already fully engaged in collective bargaining with these other
13 employers. The diversion of those employees to the election campaign would have a
14 substantial, irremediable negative impact on hundreds of employees whose terms and
15 conditions of employment are being forged through the pending negotiations.
- 16 c. There would be no means by which to recover the tremendous expense, nor to secure
17 compensation for the severe administrative burdens resulting from having to assign a
18 large number of Local 1877 staff to an election campaign. Nor would there be any
19 means by which to recover the losses in representation of Local 1877 members that
20 would result from the diversion of the Union's staff to grapple with the unlawful
21 election at issue herein.
- 22 d. Serious disruption will result if this election is allowed to proceed, resulting, *inter alia*,
23 from the unavoidable occurrence of campaigning at employee work places at the
24 airport. There is a small group pursuing the de-authorization initiative, and they will
25 undoubtedly campaign at various areas within the airport. Local 1877 staff will be
26

27 ¹ SEIU Local 790 is the local union that represents the employees affected by this case and which
28 litigated the issues herein before the NLRB. However, Local 1877 is the entity that is servicing the
employees at the airport who would be affected by the election in this case.

1 forced to campaign in the airport against de-authorization. It will unavoidably be the
 2 case that such campaigning will be disruptive of the workforce and that employees will
 3 carry on arguments regarding the election not only in non-work areas, but at their
 4 workstations.

- 5 e. Such disruption will be particularly problematic for this workforce because airport
 6 security officers are not allowed to talk about anything at their work posts other than
 7 their job duties while using security equipment at security checkpoints. If the
 8 contentious issues surrounding an unlawful election arise, it will naturally cause
 9 employees to discuss those issues at their work stations, which is not permitted, and
 10 which could result in widespread disruption and disciplinary action against such
 11 employees. It would be unjust and irremediable if employees were placed in such
 12 jeopardy and incurred such injuries based on the ordering of an election which was
 13 beyond the jurisdiction of the NLRB and prohibited by the NLRA.
- 14 f. The pendency of this potential, unlawful election has caused workers to be uncertain
 15 regarding their union-security obligations under the collective bargaining agreement
 16 that now governs their employment. Unless this court promptly resolves this issue,
 17 these questions will continue to arise. Employees will thus increasingly have questions
 18 regarding whether they are required to comply with the union security obligations set
 19 forth in the CBA between Local 790 and Covenant. Under the terms of that agreement
 20 and the NLRA, if the employees do not comply, they are subject to being discharged.
- 21 g. This is precisely the kind of confusion and jeopardy that Congress intended to avoid by
 22 eliminating the union security authorization petition and election procedure, thereby
 23 creating a presumptive right to negotiate a union security clause into a CBA, subject to
 24 the de-authorization procedure available to employees who are subject to such a
 25 procedure and who wish to rescind it.

26 10. The de-authorization petition has been pending since it was filed on January 11, 2006. The
 27 Board failed to act on the disputed election for nearly a year and a half prior to issuance of the
 28 decision that is disputed herein. An additional delay of five days until the hearing on the Motion

1 for Preliminary Injunction, plus enough time for Judge Hamilton to rule, will impose no
2 appreciable harm on Defendants or anyone else.

3 11. The equities favor granting of the Temporary Restraining Order herein because substantial
4 immediate and irreparable harm will be avoided and no harm will be caused by issuance of such an
5 order.

6 WHEREFORE, it is hereby ORDERED that:

7 Defendants and their officers, agents, servants, employees and attorneys and those in active
8 concert or participation with them are enjoined and restrained, pending ruling on Plaintiff's Motion
9 for Preliminary Injunction, previously set for a Show Cause Hearing on June 27, 2007, at 9:00 a.m.
10 by the Order to Show Cause Why Preliminary Injunction Should Not Issue signed by the
11 Honorable Phyllis Hamilton on June 1, 2007, from: taking any action to conduct a de-authorization
12 election among security employees in the bargaining unit represented by PLAINTIFF SERVICE
13 EMPLOYEES INTERNATIONAL UNION, LOCAL 790 and employed by Covenant Aviation
14 Security LLC, pursuant to the Decision and Order of the NLRB dated March 20, 2007, in NLRB
15 Case No. 20-UD-445, reported as *Covenant Aviation Security, LCC and Stephen J. Burke*,
16 *Petitioner and SEIU Local 790*, 349 NLRB No. 67.

17 This ORDER will remain in effect until Judge Hamilton has issued her ruling on Plaintiff's
18 Motion for Preliminary Injunction or until this Order is otherwise modified or vacated by Judge
19 Hamilton.

20 It is SO ORDERED, this ____ day of _____, 2007.

21
22 By:

23 _____
24 Judge, U.S. District Court,
25 Northern District of California
26
27
28